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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL**COMMISSIONERS**

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BOB STUMP

IN THE MATTER OF THE APPLICATION
OF LIVCO WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
THE PROVISION OF WATER SERVICE
IN PORTIONS OF APACHE COUNTY,
ARIZONA

DOCKET NOS. W-02121A-06-0316
SW-02563A-06-0316

**MOTION TO AMEND
DECISION NO. 69258**

IN THE MATTER OF THE APPLICATION
OF LIVCO SEWER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
THE PROVISION OF WATER SERVICE
IN PORTIONS OF APACHE COUNTY,
ARIZONA

Arizona Corporation Commission

DOCKETED

MAY 15 2009

DOCKETED BY

Pursuant to A.R.S. § 40-252, Livco Water Company and Livco Sewer Company
(collectively "Companies") move the Arizona Corporation Commission ("Commission")
to amend Decision No. 69258 ("Decision") to grant the Companies until December 31,
2009 to file documentation establishing that there is an adequate water supply available
to serve the proposed extension areas described as Concho Valley Units One, Three,

1 Thirty-Three, and Concho West. In 1985, the Arizona Department of Water Resources
2 (“ADWR”) issued its adequate water supply determination for Concho Valley Unit
3
4 Thirty-Three. *See* Attachment 1. Recently, ADWR issued its determination that
5 1,057.72 acre-feet per year of groundwater is physically available to meet the
6 Companies’ water demands for the other units in the Concho area. *See* Attachment 2.

7
8 A.R.S. § 40-252 states “[t]he commission may at any time ... rescind, alter or
9 amend any order or decision made by it.” When considering whether or not to amend a
10 decision, the Commission should base its decision on the public interest. *Arizona Corp.*
11 *Comm. v. Tucson Ins. and Bonding Agency*, 3 Ariz. App. 458 (App. 1966).
12

13 In the Decision, the Commission granted the Companies an Order Preliminary to
14 extend their CC&Ns on the condition that the Companies complete several requirements
15 set forth in the Decision by January 19, 2009. As of that date, the Companies had met
16 every condition except the one addressing the adequate water supply determination.
17

18 The Companies worked diligently to address this issue. As urged by ADWR, the
19 Companies filed for a Physical Availability Determination (“PAD”). *See* Attachment 3.
20 Because this area is not in an Active Management Area, the State of Arizona had not
21 commissioned groundwater modeling studies of the Concho area, so the Companies had
22 to perform this task. The Companies hired Southwest Ground-water Consultants, Inc.
23 (“SGC”) to conduct the modeling and file a PAD application as advised by ADWR. *See*
24 *id.* Completing the PAD application took a long time because the aquifer tests had to be
25 performed during the winter when the Companies water demand was low. *See id.* Once
26 the aquifer test was completed and the results submitted, ADWR staff requested
27
28

1 additional information and the application of different study methods. *See id.* Overall,
2 locating a hydrologist familiar with the Concho area, collecting input data, formulating a
3 model, waiting for the right time to conduct the aquifer test, working with ADWR to
4 decide upon a model, and then revising the model accordingly took longer than the
5 Companies could have anticipated – over two years. *See id.* Despite the fact that the
6 Companies acted in a timely fashion, they did not receive the PAD application approval
7 until April 28, 2009. *See* Attachment 2.
8

9
10 The Companies believe it is in the public interest to amend the Decision granting
11 the Companies until December 31, 2009 to file documentation establishing that there is
12 an adequate water supply available to serve the extension area. First and foremost, the
13 current customers in these areas need to continue to receive water from the Companies.
14 Second, the Companies have now established that groundwater is physically available to
15 meet both the existing and future water demands in the area through the PAD. Third, the
16 alternative to amending the Decision is to have the Companies start the CC&N extension
17 processes all over again, which will needlessly cost both the Commission and Companies
18 time and resources. Finally, the Companies have demonstrated good-faith efforts to meet
19 the Commission's conditions and those efforts should not be rendered fruitless primarily
20 because SGC and ADWR staff needed an unexpected length of time to develop a
21 somewhat sophisticated model to establish that groundwater is physically available to
22 Livco. Thus, the Companies move the Commission amend the Decision as follows:
23

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26
27 IT IS FURTHER ORDERED that Livco Water Company and Livco
28 Sewer Company shall timely comply with the following conditions:


1 That Livco Water Company file [~~within two years of the effective date of~~
2 ~~this Decision granting the Order Preliminary~~ BY NO LATER THAN
3 DECEMBER 31, 2009], with the Commission's Docket Control, as a
4 compliance item in this docket, a copy of the developer's LAWS for
5 Units One, Three and Concho West or documentation from ADWR
6 establishing that an adequate water supply is available to serve [~~that its~~
7 ~~computer database with the notation "Ret Sub" is the equivalent of a~~
8 ~~LAWS for Concho Valley Units One and Three~~ UNITS ONE, THREE
9 AND CONCHO WEST].

10 See Decision No. 69258, p. 8-9 (proposed amendment language in brackets and
11 "striketrough" to remove and "all caps" to add).

12 If this motion is approved, then the Companies anticipate that they will submit the
13 PAD application approval set forth in Attachment 2 to satisfy the adequate water
14 condition.

15 RESPECTFULLY SUBMITTED this 15th day of May, 2009.

16 **MOYES SELLERS & SIMS**

17 
18 Steve Wene

19
20 Original and 15 copies of the foregoing
21 filed this 15th day of May, 2009, with:

22
23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

27 
28

ATTACHMENT 1

State of Arizona

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

January 15, 1985

Mr. Roy Tanney
Chief of Subdivisions
Real Estate Department
2005 North Central Avenue, 7th Floor
Phoenix, Arizona 85004

Re: Concho Valley Unit 33,
Apache County

Dear Mr. Tanney:

Pursuant to A.R.S. 45-108, Shreeve & Associates, Inc. has provided the Department of Water Resources with information on the water supply for the referenced subdivision in Section 33, T12N, R26E, G&S R B&M.

Water for domestic use will be provided to each of the 82 lots in the subdivision by Livco Water Company from a well within its franchised area.

Adequacy of the water supply was reviewed by the Department with regard to quantity, quality and dependability. The subdivision is located about 25 miles northeast of the City of Show Low. There are two aquifers underlying the property. The subdivision's proposed supply will initially be obtained from the upper volcanic aquifer. The depth to water in the existing supply well is about 50 feet below land surface. This well is capable of producing sufficient quantities of acceptable quality water for the proposed use. The lower aquifer in the area is the regional Coconino Sandstone Formation, and this aquifer could provide additional water supplies if necessary. The depth to water in the Coconino aquifer is about 550 feet below land surface and there has been no noticeable decline of the water level over the past several years. Available information indicates the area receives substantial amounts of annual recharge which should be sufficient to supply the subdivision's projected demands for a sufficiently long period of time. The Department of Water

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

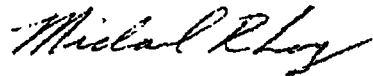
Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1583

Mr. Roy Tanney
January 15, 1985
Page Two

Resources, therefore, finds the water supply to be adequate to meet the subdivision's projected needs. Any change to the subdivision or its water supply plans may invalidate this decision.

This letter constitutes the Department's report on the subdivision water supply and is being forwarded to your office as required by A.R.S. 45-108. This law requires the developer to hold the recordation of the above subdivision's plats until receipt of the Department's report on the subdivision's water supply. By copy of this report, the Apache County Recorder is being officially notified of the developer's compliance with the law.

Sincerely,



Michael R. Long
Chief Hydrologist

dg

cc: Henry H. Leigh,
Lake Investment Company
Shreeve & Associates, Inc.
Livco Water Company
Mary B. Chavez,
Apache County Recorder
Monty Stansbury,
Apache County Planning/Zoning
Wesley Shonerd,
Arizona Department of Health Services

ATTACHMENT 2

JANICE K. BREWER

Governor



HERBERT R. GUENTHER

Director

ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Second Floor
PHOENIX, ARIZONA 85012-2105
(602) 771-8500

April 28, 2009

Rick Kautz, President
Livco Water Company
PO Box 659
Concho, AZ 85924

**RE: Livco Unit 1 and Unit 3 North, Apache County, Arizona
Application for a Physical Availability Determination
ADWR #52-700520.0000**

Dear Mr. Kautz:

The Department has completed its review of the application for a Physical Availability Determination for Livco Unit 1 and Unit 3 North. The Department received the application on May 8, 2008. The study area consists of Township 12 North, Range 26 East, Sections 7, 18 & 29, GSR B&M in Apache County, Arizona.

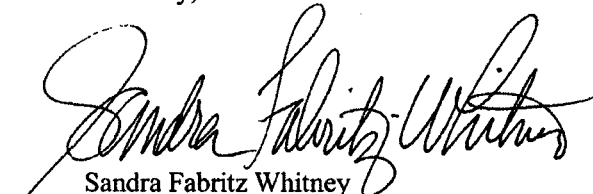
In accordance with A.A.C. R12-15-702(C), the Department determined that a minimum of **1057.72 acre-feet per year** of groundwater is physically available for 100 years under A.A.C. R12-15-716(B) for adequate water supply purposes in the study area. With regard to water quality for the purpose of A.A.C. R12-15-719(A), the provider you select must be in compliance with the Arizona Department of Environmental Quality drinking water compliance unit. With regard to water quality for the purpose of A.A.C. R12-15-719(B) the study area is not located within one mile of any known WQARF or Superfund site.

As with all determinations of physical availability issued by the Department, if the Department finds that the water supply is not available because the assumptions and information used in determining the physical availability under the current criteria prove incorrect, the Department will modify the availability of groundwater accordingly. Changes in the number or locations of wells may impact applicability of this determination to future applications for determinations of adequate water supply.

The results of the Department's review fulfill the requirements of R12-15-703(B) and may be cited in applications for determinations of adequate water supply. These applications have certain additional requirements based on the adequate water supply criteria referenced in A.R.S. § 45-108 and A.A.C. R12-15-701 et seq. For further information on these requirements, please contact the Office of Assured and Adequate Water Supply at (602) 771-8599.

If you have any questions regarding this Physical Availability Determination, please contact Rick Obenshain at (602) 771-8599.

Sincerely,



Sandra Fabritz Whitney
Assistant Director, Water Management

cc: Steve Wene, Moyes, Sellers & Sims

Scott Journell, Southwest Ground-water Consultants, Inc.

Steve Olea
Arizona Corporation Commission

Linda Taunt
Arizona Department of Environmental Quality

ATTACHMENT 3

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I, the undersigned, after being first duly sworn upon my oath, hereby affirm as follows:

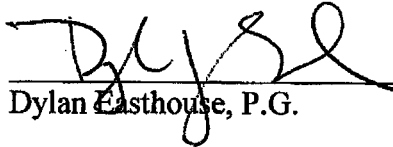
- 1) I am over the age of eighteen.
- 2) I have personal knowledge of the statements set forth herein and I am competent to testify at a hearing or trial with respect to the same.
- 3) On April 20, 2007, Livco Water Company (Livco) executed a contract with Southwest Ground-water Consultants, Inc. (SGC) to produce a hydrology study to determine whether there is adequate groundwater physically available to meet Livco's current, committed, and projected water demands.
- 4) Consistent with prudent aquifer testing practices, the aquifer tests required Livco to shut down its water production well, remove pumps from wells, install high-capacity pumps, and then remove and reinstall all equipment to original condition after the aquifer testing is completed. Thus, the aquifer test had to be run when Livco's customer water demands were low, so the initial test was scheduled to occur from December 17, 2007 to December 19, 2007.
- 5) Due to mechanical failures, another aquifer test had to be conducted from February 14, 2008 to February 16, 2008. On May 6, 2008, SGC submitted the Physical Availability Determination Application to the Arizona Department of Water Resources ("ADWR").
- 6) On September 17, 2008, following their review of the PAD Application and supporting hydrology study, ADWR inquired about a numeric modeling approach.
- 7) On November 5, 2008, SGC met with ADWR staff to discuss their model requirements. Based on those discussions, on November 26, 2008 SGC provided a proposed scope of work using an analytical modeling approach.
- 8) On January 8, 2009, ADWR reviewed the proposed scope of work submitted by SGC and requested additional information and analysis.

1 9) On January 30, 2009, SGC proposed additional revisions to the model
2 consistent with ADWR rules and discussions with ADWR staff.

3 10) Between February 26, 2009 and April 28, 2009, SGC held numerous
4 discussions with ADWR staff to determine the appropriate model and criteria
5 necessary to complete the Physical Availability Determination Application.

6 11) On April 28, 2009, ADWR issued the Physical Availability Determination
7 Application for Livco determining that a minimum of 1,057.72 acre-feet per year of
8 groundwater is physically available for 100-years to supply future water users.

9 DATED this 15th day of May, 2009.

10 
11 Dylan Easthouse, P.G.

12 SUBSCRIBED AND SWORN TO before me, a Notary Public, this 15th day of
13 May, 2009.

14 
15
16 Notary Public

17 My Commission Expires:

18 02/06/2012

